Supreme Court, U.S.
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No. 01-194

In The

Supreme Court of the United States

JOHN H. FORD, III,

Petitioner,

v.

SHAUN FRAME; CITY OF COLUMBUS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Sixth Circuit err in upholding the District Court's decision to grant summary judgment to Defendants for failure of Plaintiff to establish a prima facie case of handicap discrimination under the Americans With Disabilities Act or the Rehabilitation Act?

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STATUTES:

Americans With Disabilities Act, 42 United States Code Section 12101 (1974) 1, 2, 3, 4, 5

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OTHER:

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STATEMENT OF THE CASE

Petitioner, John Ford was employed as a Plant Maintenance Mechanic with the City of Columbus, Department of Public Utilities, Division of Water. The position is labor intensive and requires installing, maintaining, and removing industrial equipment.

Petitioner was injured in October 1993 and went on Workers' Compensation until January 1994. In March of 1994, Petitioner was diagnosed with a herniated disk, had surgery, and collected Workers' Compensation until May.

In July 1994, Petitioner requested to perform preventative maintenance full time as an accommodation to his alleged disability. Preventative maintenance is not a separate position, but only one of a full range of duties required as a Plant Maintenance Mechanic.

Petitioner's doctor was contacted concerning the accommodation request. The doctor indicated that Petitioner was able to perform all of the essential functions of his position one-hundred percent of the time. Based on the medical information provided by the doctor, the City of Columbus determined there was no support for a reasonable accommodation.

In March 1997, Petitioner filed a complaint in United States District Court for the Southern District of Ohio based upon a violation of the Americans With Disabilities Act (ADA). Defendants filed a Motion for Summary Judgment in March 1999 and on April 12, 2000, the United States District Court granted Defendants' motion.

Petitioner appealed this decision pro se to the United States Court of Appeals for the Sixth Circuit. On January

26, 2001, the Sixth Circuit upheld the decision of the lower court. Petitioner's request for a rehearing in the Sixth Circuit was denied on March 7, 2001.

REASONS FOR DENYING THE PETITION

The Petition should be denied because Petitioner has failed to assert any meritorious reason to review the decision of the Sixth Circuit Court of Appeals. Rule 10 of the Rules of the Supreme Court of the United States specifies that "A petition for a writ of certiorari will be granted only for compelling reasons." Petitioner's single paragraph as to the reasons why the writ of certiorari should be granted does not present any reasons why, in the discretion of this Court, such writ should be granted.

The Sixth Circuit did not err in affirming the District Court's decision to grant summary judgment to Respondents. The District Court properly found that Petitioner did not establish a prima facie case of handicap discrimination.

1. Petitioner's Questions Presented for Review Are Not Properly Before the Court.

The case below relates to Petitioner's request in July 1994 for a reasonable accommodation under the Americans With Disabilities Act (ADA). Pro Se Petitioner's questions presented for review and his Statement of the Case, however, relate to a work accident which occurred in October 1998 (Appendix A), some four years after his request for reasonable accommodation. There is nothing

in his federal suit relating to any injury he may have suffered in 1998 due to negligence. In fact, Petitioner could not have raised the issues from the 1998 injury in a suit which was filed over one year before the new injury occurred.

While certainly some leeway is to be granted to pro se filings, the Petition and the Questions Presented for Review must be based upon the facts, issues, and law presented to the Sixth Circuit and litigated in the District Court. The argument of negligence in a 1998 accident can in no way form a basis for the granting of a petition for writ of certiorari in a case which was filed in 1997 based upon alleged violations of the ADA, and failure to grant a reasonable accommodation in 1994.

2. The Sixth Circuit Court Properly Affirmed The District Court's Decision To Grant Summary Judgment To Defendants For Failure Of Plaintiff To Establish A Prima Facie Case Of Handicap Discrimination Under The Americans With Disabilities Act Or The Rehabilitation Act.

The Petitioner has not raised, nor is there any evidence to the contrary that the Sixth Circuit committed any errors in reviewing the District Court's decision in this case.

A. Standards Of Review.

The Sixth Circuit is required to review the grant of summary judgment de novo using the same test that is used by the District Court. *Gains v. Runyon,* 107 F.3d 1171,

1174 (6th Cir. 1997). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c).

B. Petitioner Has Failed To Establish A Prima Facie Case of Disability Discrimination Under The Americans With Disabilities Act By Failing To Establish That He Was A Qualified Individual With A Disability.

The Sixth Circuit as well as the District Court were correct in their analysis of Petitioner's claims under the ADA as well as § 504 of the Rehabilitation Act. Petitioner had failed to present a prima facie case of disability discrimination because he failed to show that he was disabled under the meaning of the acts. *Sullivan v. River Valley School District*, 197 F.3d 804 (6th Cir. 1999), *cert. denied*, 120 S.Ct. 2718 (2000).

Although the record below indicates that Petitioner did suffer from a physical impairment of his back and knees, Petitioner had failed to show that these impairments substantially limit a major life activity within the meaning of the ADA. In fact, Petitioner's own treating physician indicated that Petitioner could perform all of the essential functions of his job one-hundred percent of the time. Additionally, Petitioner's own request for a reasonable accommodation also indicated that he could perform all the essential functions of his job. Since Petitioner was unable to prove that he was disabled under the ADA, the District Court found and the Sixth Circuit

affirmed that he was unable to prove a prima facie case under the ADA.

In making the foregoing arguments related to the issue of whether the Sixth Circuit erred by affirming the District Court's grant of summary judgment, the Respondents do not waive the threshold issue that Petitioner's Questions Presented for Review and his Statement of the Case have absolutely no relation to the facts, issues, and law in the case from which he appeals.

CONCLUSION

Petitioner has raised issues dealing with an unrelated 1998 work accident rather than his 1994 ADA request for reasonable accommodation. The Sixth Circuit's affirmance of the District Court's grant of summary judgment for Respondent was legally correct and compelling reasons, under Rule 10 of the Rules of the Supreme Court of the United States, do not exist. For all of the foregoing reasons, Respondents respectfully request the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

[LOGO] *City of Columbus*

ACCIDENT REPORT 9877.92

Injury Incident Number

NOTE This form must be completed and forwarded to the Division's Claim Department within 24 hours after all on-the-job injuries and/or occupational illnesses are reported (Note: lost time does not begin until the day following the injury). Be sure every part of form is completed and every question answered. Data entry fields are highlighted in gray and *must be completed.* Both ***EMPLOYEE and SUPERVISOR*** must sign the back of form.

EMPLOYEE SECTION – to be completed by Employee

Social Sec Number

Name John (First) H. (Initial) Ford III (Last)

Home Address 5056 Nelson Dr. (Street) South Bloomfield (City), 43103 (Zip)

Home Phone (740) 983-2326

Work Address Parson's Ave. (Street) Columbus (City) (Zip)

Work Phone (614) 645-3227

Birth Date 07-10-59 Sex M

Job Title Plant Maint. Mech.

Dept/Div Public Utilities/Water

10-29-98
Date of injury/illness
⇓

[✓] Full-Time
[ ] Part-Time

Time of Injury/Illness 2:00-2:15

[ ] AM [ ] Before Work
[✓] PM [ ] After Work

Date Reported to Supervisor 10-30-98

Recurrence?
[ ] NO
[✓] YES

If "Yes", Date of Original Injury 5-14-97 If "Yes", Worker's Comp Claim #97-389555 If you did not report the injury recorded above to your supervisor on the date of the injury, please explain why: It was bothering me right after it happened, but it really didn't hurt as bad as it did the next morning.

Location of accident or exposure (building, room, number, street number, etc.): On a manlift, down inside the bottom of manlift #2 basin [JHP III]

Describe how accident occured – **BE SPECIFIC** (climbing, using tools, lifting, crawling, etc.): I was inside manlift by myself pulling up on a 40 ft. stainless steel tension rod so I could fasten it to the bar under the launder troff. Greg & Virgil were on the basin floor trying to help hold it. We're understaffed.

Witnesses:

(A) Virgil Silvey
Name Address Phone

(B) Greg Goodwin
Name Address Phone

Where were you treated? (Check all that apply)

01 [ ] No Medical Treatment Required
03 [ ] Hospital Emergency Room
➨ Hospital Name _____
ER Phys Name _____

02 [ ] First Aid Only 04 [✓] Personal Physician
➨ Name Dr. Frank Dibenedetto
Address 421 S. Gedgenville Rd. Cols. Ch. 43228

Accident Information:

WEATHER CONDITIONS

[01] Enter Primary Code

01 [✓] Clear
02 [ ] Fog
03 [ ] Heavy Wind
04 [ ] Rain
05 [ ] Not Applicable

SURFACE CONDITIONS

[01] Enter Primary Code

01 [✓] Dry
02 [ ] Ice
03 [ ] Grease
04 [ ] Mud/Sand
05 [ ] Wet
06 [ ] Snow
07 [ ] Not Applicable

LIGHT CONDITIONS

[02] Enter Primary Code

01 [ ] Dark
02 [✓] Day
03 [ ] Dawn/Dusk
04 [ ] Inside
05 [ ] Not Applicable

[✓] NOTE: Enter primary code number in box, check all other code boxes (small boxes) that apply

TYPE OF ACCIDENT [17] Enter Primary Code

* * *

17 [✓] Overexertion, Strain, Hernia, Twist

INJURY/ILLNESS CODES [20] Enter Primary Code

* * *

20 [✓] Hernia

* * *

Abdominal Wall Hernia

ANATOMY CODES [02] Enter Primary Code

* * *

02 [✓] Abdomen

* * *

SUPERVISOR SECTION – to be completed by Supervisor

Will injury result in lost time (other than date of accident)?

01 [✓] YES 02 [ ] NO

Was employee working with regular supervisor and/or crew?

01 [✓] YES 02 [ ] NO 03 [ ] Not Applicable

Was appropriate personal protective equipment being worn?

01 [✓] YES 02 [ ] NO 03 [ ] Not Applicable

Approximately how many years has injured employee been working in the job classificaiton?

01 [ ] Less than 1 year
02 [ ] 1 to 5 years
03 [✓] More than 5 years

What would you recommend to help prevent this type of accident/injury in the future (e.g., additional training, changes in equipment or procedures, closer supervision, etc.) Each individual needs to know their own physical abilities and limitations. Each individual needs to report any and all problems to his/her supervisor ASAP. Each individual should take responsibility for making sure themselves work safely and others around them do the same.

AGENT CODE [50/49] Enter Primary Code

* * *

49 [✓] Inattention, Fellow Employee
50 [✓] Inattention

* * *

Primary ICD9 Injury Code

Injury Diagnosis

Approval Code
R – Division Approve Pending
L – Division Approved, Finance Approval Pending

/s/ John H. Ford — 11-2-98
Signature of Employee — Date Signed

/s/ Mark G. Severt — 11-3-98
Signature of Supervisor — Date Signed

Signature of Division or Department Head
/s/ John R. Doutt

Date Signed 11/9